

Congress of the United States
Washington, DC 20515

January 28, 2015

Kevin Counihan, Director
Center for Consumer Information & Insurance Oversight
Center for Medicare & Medicaid Services
United States Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Mr. Counihan:

We are writing to seek an explanation regarding the denial of Pennsylvania's application for its Children's Health Insurance Program Buy-In Program to qualify as minimum essential coverage. We have great concern that middle-class families who have in good faith purchased health insurance for their children will unfairly be forced to find other plans or pay a tax penalty.

Pennsylvania has been a national leader in the effort to ensure low-income children have access to quality, affordable health insurance. In 1992, Pennsylvania launched one of the first children's health insurance programs in the country and it later served as the model for the official State Children's Health Insurance Program (CHIP), a federal-state partnership that operates under Title XXI of the Social Security Act. Authorized by federal law but administered by states, the partnership gives state governments the flexibility they need to meet the unique needs of their residents.

In Pennsylvania, CHIP is available without cost sharing for children in families with incomes at or below 200 percent of the federal poverty level (FPL), and it is low cost to children in families between 200 and 300 percent FPL. Since 2006, families with incomes above 300 percent FPL have had the option to buy into the Pennsylvania CHIP program at the state's negotiated rate, which averages \$226 per child per month. The CHIP Buy-In Program is a state law established as part of the continuing initiative to reduce the number of uninsured children in Pennsylvania.

The Pennsylvania Insurance Department administers the CHIP and CHIP Buy-In Program together. Consistent with the federal CHIP statute, the Centers of Medicare and Medicaid Services (CMS) has approved Pennsylvania's CHIP benefit package through state plan amendments, and it is periodically evaluated by the National Committee for Quality Assurance. Importantly, the benefit packages for the federal CHIP program administered in Pennsylvania and the state CHIP Buy-In Program are identical, and administering the two programs together makes operational sense. Statewide outreach and enrollment efforts use the slogan "We Cover All Kids," and enrollment materials indicate that there is no upper-bound income limit on eligibility for CHIP, only increased cost-sharing requirements.

As you are aware, the Affordable Care Act established a new requirement that all Americans purchase health insurance or pay a tax penalty. Per the IRS website, the individual mandate "requires you and each member of your family to have basic health insurance (also known as minimum essential coverage)" or qualify for an exemption. ACA specifically cited CHIP, however, as an example of coverage

that meets minimum essential coverage standards. In other words, families who enroll their children in CHIP have purchased ACA-compliant coverage and should not owe a penalty.

In a letter to the Pennsylvania Insurance Department dated December 11, 2014, CMS denied Pennsylvania's application to have the CHIP Buy-In Program recognized as minimum essential coverage. Congress has consistently lauded Pennsylvania's CHIP program and specifically recognized it as minimum essential coverage when operated under Title XXI of the Social Security Act, but CMS has now denied recognition to identical coverage offered as a matter of state law. This December 2014 action creates an important distinction between the two programs, one that parents and grandparents could not have anticipated when enrolling their children in health insurance coverage earlier that year.

Families who participate in the Pennsylvania CHIP Buy-In Program believe that they have CHIP coverage and understandably expect that it meets ACA standards. When those families look to the IRS website to determine their compliance with the individual mandate, they will read that "the Children's Health Insurance Program (CHIP) ... qualifies as minimum essential coverage." These families have done the responsible thing: they purchased high quality and comprehensive health insurance for their children. It is unfair for CMS to now tell them their coverage is not ACA-compliant, forcing them to find other coverage or pay ACA tax penalties to keep the CHIP Buy-In coverage they currently have. It further deprives these families of the peace of mind they had purchased the Buy-In insurance for their children in the first place.

Given these considerations, we respectfully request your timely response to the following questions:

- For what reasons would CMS approve Pennsylvania's CHIP benefit package when operated under Title XXI of the Social Security Act, but deny approval when the identical package is offered pursuant to state law?
- As families could not have known the CHIP Buy-In Program did not qualify as minimum essential coverage until December 2014, and thus cannot be considered to have acted in bad faith, what efforts will CMS and IRS make to grant those children a temporary hardship exemption? Will those families be responsible for shared responsibility payments for months in which they had government-sponsored coverage they believed to be ACA-compliant?
- If CMS expects children enrolled in the CHIP Buy-In Program to transition to alternative coverage, what efforts will be made to establish a special enrollment period for current participants? How will CMS minimize disruptions to coverage and access to care? How do Exchange plans compare to Buy-In Program coverage with regards to affordability and network adequacy?

We appreciate your prompt attention to these important questions.

Sincerely,



PATRICK MEEHAN
Member of Congress



GLENN THOMPSON
Member of Congress



RYAN COSTELLO
Member of Congress



LOU BARLETTA
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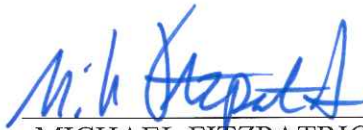
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